

## Internal Revenue Service

Department of the Treasury

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Person To Contact:

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Refer Reply To:

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Date:

December 28, 2009

### Legend:

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

a =

Country A =

Business X =

Business Y =

Agency =

Certain Legal  
Requirements =

Date 1 =

Dear

This letter responds to your October 2, 2009 request for rulings as to the federal income tax consequences of a partially completed and proposed transaction (the "Proposed Transaction"). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations; (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) of the Internal Revenue Code, as amended (the "Code") and §1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see §355(e) and §1.355-7).

### **Summary of Facts**

Parent is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated federal income tax return (the "Parent Group"). In relevant part, Parent owns all of the voting stock of Sub 1 and Sub 2. Sub 2 owns all of the voting stock of Sub 3, while Parent owns all of the nonvoting stock of Sub 3. Sub 3 owns more than a percent (greater than 80) of the stock of Distributing, which is incorporated in Country A and is a controlled foreign corporation within the meaning of

§957. Distributing owns more than a percent of the stock of Controlled, also a corporation incorporated in Country A and a controlled foreign corporation within the meaning of §957.

Sub 1 owns all of the stock of Sub 4. Sub 4 owns all of the stock of Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, and Sub 10. Each of Sub 5 through Sub 10 is classified as a corporation for federal income tax purposes under §§301.7701-2 and 301.7701-3.

Distributing and the members of its separate affiliated group as defined in §355(b)(3) (the “Distributing SAG”) directly engage in Business X. Controlled and the members of its separate affiliated group as defined in §355(b)(3) (the “Controlled SAG”) directly engage in Business Y. Financial information has been submitted indicating that Business X and Business Y each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Parent is regulated by Agency. As a result, Parent and certain of its subsidiaries, including Sub 2, are required to comply with Certain Legal Regulations, which limit Sub 2’s ability to . Parent has determined that the Proposed Transaction will serve the corporate business purpose of increasing Sub 2’s

“Corporate Business Purpose”), (the currently reflected in Sub 3’s indirect ownership of Controlled.

### **Proposed Transaction**

To achieve the business purposes described above, the Parent Group has undertaken, and proposes to undertake the following steps:

- (i) On Date 1, Distributing contributed its assets related to Business Y, as well as the operational employees of Business Y, to Controlled (the “Contributed Assets”) in exchange for additional shares of Controlled stock and the assumption of liabilities associated with the Contributed Assets (the “Contribution”).
- (ii) Distributing will sell all of its shares of Controlled stock to Sub 3 in exchange for a receivable from Sub 3.
- (iii) As soon as practicable after step (ii), following the completion of an audit confirming the existence of sufficient distributable reserves, and as part of an overall plan of reorganization, Distributing will distribute the entire Sub 3 receivable received in step (ii) to Sub 3. (Together with step (ii), the

“Distribution”). The form of the Distribution is structured to conform to the corporate laws of Country A.

- (iv) Sub 3 will contribute the shares of Controlled stock received from Distributing in step (ii) to Sub 4 in a transaction intended to qualify as a §351 transaction.
- (v) Sub 3 will sell the shares of Sub 4 stock received in exchange for the shares of Controlled stock in step (iv) to Sub 1 for cash equal to the fair market value of the Sub 4 shares in an intercompany transaction (within the meaning of §1.1502-13(b)(1)).

In connection with the Proposed Transaction, Distributing and Controlled will enter into certain intercompany arrangements for continuing services. Pursuant to such arrangements, Distributing will continue to provide to Controlled common support services. Distributing will also continue to provide certain Business X services to Controlled.

### **Representations**

The taxpayer has made the following representations in connection with the Proposed Transaction:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed in the Distribution will be received by Sub 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business X (as conducted by the Distributing SAG) represents the present business operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business Y (as conducted by the Controlled SAG) represents the present business operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The Distributing SAG neither acquired Business X nor acquired control of an entity conducting Business X during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution the Distributing SAG has been the

principal owner of the goodwill and significant assets of Business X and will continue to be the principal owner following the Distribution.

- (f) The Controlled SAG neither acquired Business Y nor acquired control of an entity conducting Business Y during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Controlled SAG has been the principal owner of the goodwill and significant assets of Business Y and the Controlled SAG will continue to be the principal owner following the Distribution.
- (g) Following the Distribution, the Distributing SAG will continue the active conduct of Business X and the Controlled SAG will continue the active conduct of Business Y independently and with their separate employees (except as provided in the Continuing Arrangements).
- (h) The Distribution will be carried out for the Corporate Business Purpose. The Distribution is motivated, in whole or in substantial part, by the Corporate Business Purpose.
- (i) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (j) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution.
- (k) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution.

- (l) The Distribution is not part of a plan or series of related transactions (within the meaning of §355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.
- (m) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of (i) the total liabilities (if any) assumed (within the meaning of §357(d)) by Controlled, (ii) the amount of liabilities (if any) owed to Controlled by Distributing that are discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of the property (if any) (other than stock and securities permitted to be received under §361(a) without the recognition of gain) received by Distributing from Controlled in the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Distribution.
- (n) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of (i) any liabilities assumed (within the meaning of §357(d)) by Controlled and (ii) the total amount of money and other property (within the meaning of §361(b) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (within the meaning of §357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the transferred assets.
- (o) Except for indebtedness created in the ordinary course of business, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (p) Payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (r) Immediately after the Distribution (taking into account §355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of §355(g)(2)).

- (s) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (t) Immediately after the sale of the shares of Controlled stock to Sub 3, Distributing will have sufficient distributable reserves available to distribute the receivable back to Sub 3.
- (u) The Contribution by Distributing to Controlled of the Contributed Assets in exchange for additional shares of Controlled was not an exchange described in §1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (v) Distributing and Controlled were controlled foreign corporations, within the meaning of §957(a), immediately before and after the Contribution.
- (w) Sub 3 was a §1248 shareholder, within the meaning of §1.367(b)-2(b), with respect to each of Distributing and Controlled immediately before and after the Contribution.
- (x) Distributing and Controlled were not passive foreign investment companies (“PFICs”) within the meaning of §1297(a) immediately before or after the Contribution.
- (y) Distributing did not hold any United States real property interests, as defined in §897(c)(1), immediately before or after the Contribution.
- (z) Distributing and Controlled will be controlled foreign corporations, within the meaning of §957(a), immediately before and after the Distribution.
- (aa) Sub 3 will be a §1248 shareholder, within the meaning of §1.367(b)-2(b), with respect to each of Distributing and Controlled immediately before and after the Distribution.
- (bb) Distributing and Controlled will not be PFICs within the meaning of §1297(a) immediately before or after the Distribution.
- (cc) Controlled will not hold any United States real property interests, as defined in §897(c)(1), immediately before or after the Distribution.

### **Rulings**

Based solely on the information submitted, we rule as follows:



- (1) Step (i), step (ii) and step (iii) of the Proposed Transaction will be treated as if Distributing contributed the Contributed Assets to Controlled in exchange for additional shares of Controlled stock and the assumption of liabilities associated with the Contributed Assets, and then distributed the Controlled shares to Sub 3 (Rev. Rul. 83-142, 1983-2 C.B. 68).
- (2) The Contribution, together with the Distribution, will be a reorganization within the meaning of §368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of §368(b).
- (3) Distributing will recognize no gain or loss in the Contribution (§§357(a) and 361(a)).
- (4) Controlled will recognize no gain or loss in the Contribution (§1032(a)).
- (5) Controlled’s basis in each asset received in the Contribution will be equal to the basis of the asset in the hands of Distributing immediately prior to its transfer (§362(b)).
- (6) Controlled’s holding period in each asset received in the Contribution will include the period during which Distributing held the asset (§1223(2)).
- (7) Distributing will recognize no gain or loss in the Distribution (§361(c)).
- (8) Sub 3 will recognize no gain or loss, and otherwise will recognize no amount in income, upon its receipt of Controlled stock in the Distribution (§355(a)). However, any distribution by Distributing to Sub 3 in excess of the Sub 3 receivable will be subject to the provisions of §301 (See Rev. Rul. 83-142, 1983-2 C.B. 68).
- (9) Sub 3’s aggregate basis in the Distributing and Controlled stock will equal the aggregate basis of the stock of Distributing held by Sub 3 immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each under §1.358-2(a)(2).
- (10) Sub 3’s holding period in the Controlled stock received will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution (§1223(1)).
- (11) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with §312(h) and §1.312-10(a).

- (12) The Contribution will be an exchange to which §1.367(b)-1(c) and -4(a) apply. No amount will be included in income as a deemed dividend equal to the §1248 amount under §367(b) as a result of the Contribution.
- (13) The Distribution will be an exchange to which §1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Sub 3's postdistribution amount (as defined in §1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than its predistribution amount (as defined in §1.367(b)-5(e)(1)) with respect to Distributing or Controlled, Sub 3's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Sub 3's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub 3 must instead include such amount in income as a deemed dividend from such corporation. If Sub 3 reduces the basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock), Sub 3 must increase its basis in the stock of the other corporation to the extent provided in §1.367(b)-5(c)(4).

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular we express no opinion regarding the following:

- (i) Whether the Proposed Transaction satisfies the business purpose requirement of §1.355-2(b);
- (ii) Whether the Proposed Transaction is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see §355(a)(1)(B) and §1.355-2(d));
- (iii) Whether any distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under §355(e)(2)(A)(ii);
- (iv) The tax consequences of steps (iv) and (v) of the Proposed Transaction;
- (v) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which §367(a) or (b) apply;

- (vi) To the extent not otherwise specifically ruled upon above, any other consequences under §367 with respect to any transaction described in this letter ruling;
- (vii) Whether any or all of the above-referenced foreign corporations are PFICs within the meaning of §1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of §§1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provisions of the Code.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this letter ruling is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: